88- 69

No.

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

BASIL G. GREANIAS,
Petitioner
v.
E. IRENE WRIGLEY,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether this Court's ruling in *Anderson v. Creighton*, 107 S. Ct. 3034 (1987), requires the plaintiff to show the existence of the "clearly established law" the defendant violated at the time of allegedly unconstitutional termination of a public employee.

2. If the first question is answered in the affirmative, whether the Seventh Circuit misapplied *Anderson* by focusing on the requirements of the plaintiff's job, and failing to cite any authority to support a finding that "clearly established law" prohibited the defendant's action.

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Petitioner
v.
E. Irene Wrigley,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Basil G. Greanias respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The first opinion of the court of appeals is not reported and is included in the Appendix. Also included in the Appendix are the order of district court denying the defendant's motion for summary judgment, and the second opinion of the court of appeals, reported at 842 F.2d 955.

JURISDICTION

The opinion of the court of appeals was entered on March 22, 1988. A petition for rehearing was timely filed in March 1988. The court of appeals denied the petition for rehearing on April 13, 1988. The jurisdiction of this Court is invoked under 28 *U.S.C.* § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The first amendment, and section 1 of the fourteenth amendment, to the Constitution of the United States, and 42 *U.S.C.* § 1983 are set out below:

FIRST AMENDMENT

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FOURTEENTH AMENDMENT

> All persons born or naturalized in the

United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 *U.S.C.* § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the person injured in an action of law, suit in equity, or other proper proceedings for redress.

STATEMENT OF THE CASE

At the time of the actions complained of, the defendant Basil G. Greanias (Petitioner) was the State's Attorney of Macon County, Illinois. In the 1980 election Greanias, a Democrat, defeated Robert Wrigley, a Republican, son of the plaintiff E. Irene Wrigley (Respondent). The plaintiff Wrigley, also a Republican, was the chief secretary for the defendant's predecessor, and had held the post for two years (App. at A-2).

Shortly after the election the defendant discharged the plaintiff, advising her that he considered her position one which involved the development of policies in the office and required a close rapport with the State's Attorney (App. at A-2). The plaintiff then filed suit in federal district court, claiming that her discharge violated the first and fourteenth amendments, and that the defendant was liable for damages under 42 *U.S.C.* § 1983. The plaintiff raised two alternative theories of recovery. First, she argued that her termination violated her first amendment right to political association. Second, the plaintiff claimed that she was terminated because her son was the defendant's political opponent, and that this violated a due process right to familial association.

The parties filed cross-motions for summary judgment; the district court granted the defendant's motion on the ground that the plaintiff was a confidential employee whose termination did not implicate the first amendment, despite the fact that it was politically motivated (App. at A-3). A panel of the seventh circuit reversed, holding that there was a disputed issue of fact regarding the nature of the plaintiff's job which precluded the entry of summary judgment (App. at A-7).

On remand, the defendant filed another motion for summary judgment, reiterating his claim that even if the termination violated the Constitution, he was entitled to qualified immunity from damages liability. The district court rejected the immunity defense, ruling that the law regarding politically motivated terminations was clearly established in 1980, through this Court's opinions in *Elrod v. Burns*, 427 U.S. 347 (1976), and *Branti v. Finkel*, 445 U.S. 507 (1980) (App. at A-13). With regard to the plaintiff's familial association claim, the court ruled that whatever right existed in 1987 was not clearly established in 1980 at the time of the discharge. The court therefore granted

summary judgment in favor of the defendant on the familial association claim (App. at A-15).

On appeal to the Seventh Circuit for the second time, the defendant argued that the lower court erred in ruling that *Elrod v. Burns*, *supra*, and *Branti v. Finkel*, *supra*, constituted "clearly established law" which put him on notice that his actions in this matter were not constitutionally justified.

The court, relying on this Court's opinion in *Anderson v. Creighton*, 107 S. Ct. 3034 (1987), ruled that the lower court's conclusion that *Elrod* and *Branti* constitute clearly established law was not entirely correct (App. at A-22). Rather, the court ruled that the defendant would be entitled to qualified immunity if, in 1980, "the law did not clearly establish that a state's attorney was prevented from discharging someone holding *this particular position*" (App. at A-22) (emphasis in original).

The Seventh Circuit went on to conclude that the lower court was nevertheless correct when it refused to grant summary judgment. The court noted that a factual dispute remained regarding the actual duties of the plaintiff, and the resolution of this dispute involved credibility determinations regarding the defendant's intent to make his chief secretary a confidential employee (App. at A-23).

REASONS FOR GRANTING THE PETITION

The Seventh Circuit has decided a case in which it misapplied the reasoning of *Anderson v. Creighton*, *supra*, and transformed the legal inquiry of the qualified immunity defense into a factual inquiry which, under the court's analysis, will never be capable of resolution without a trial.

The circuit court's analysis conflicts with both *Anderson*

and the Ninth Circuit's opinion in *Todd v. United States*, No. 85-4106 (9th Cir. 6/10/88). The court's decision involves a matter of great importance to the administration of justice and should be resolved promptly by this Court.

I. THE COURT'S OPINION CONFLICTS WITH THE ANDERSON STANDARD.

In a recent term, this Court again defined the parameters of the qualified immunity standard it first articulated in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), as follows:

> [G]overnment officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

457 U.S. at 818.

In *Anderson v. Creighton*, 107 S. Ct. 3034 (1987), this Court rejected the position that official action is protected by qualified immunity "unless the very action in question has previously been held unlawful." 107 S. Ct. at 3039. The Court explained, however, that for qualified immunity to be unavailable it must be "sufficiently clear that a reasonable official would understand that *what he is doing*" violates a clearly established right. *Id.* (emphasis added). The Court's ruling in *Anderson* appears to require a party seeking to obtain damages from a public official for a constitutional violation to indicate the particular authority upon which he relies to put the defendant on notice of the

unlawfulness of his actions. The Court noted in *Anderson* that the right must be established in a "particularized" sense, *id.*, and the circuit court in this case correctly recognized this aspect of the *Anderson* analysis:

> The district court was certainly correct on one level of generality when it stated that "the law surrounding politically motivated firings was settled and clearly established at the time of the plaintiff's discharge.". . . . However, the inquiry does not end here. Mr. Greanias would be entitled to qualified immunity if, at the time he acted, the law did not clearly establish that a state's attorney was prevented from discharging someone holding *this particular position.*

App. at A-22 (emphasis by the court).

Yet, having made this observation, the court proceeded to consider, not the state of the law in 1980, but rather the facts underlying the plaintiff's job description. In so doing, the circuit court confused the inquiry necessary to determine whether or not an employee is "confidential" under the *Elrod* standard with the inquiry necessary to determining the existence of "clearly established" law under the *Anderson* standard.

The discharge of confidential employees for political reasons is constitutional under *Elrod* because of the nature of the position, that is, if a plaintiff is found to be a confidential employee, then his termination does not violate the Constitution. If a discharged plaintiff is found not to be a confidential employee, then the defendant might be held liable for damages. The inquiry regarding the nature of the position stops, however, with the resolution of the

confidential/not confidential issue.

Qualified immunity, on the other hand, does not depend on the factual details of the position involved. Rather, the existence of qualified immunity depends on the existence of law, at the time of the action, which clearly established the unconstitutionality of the defendant's conduct. The court's approach in refusing to consider the merits of the immunity claim because of the factual questions flies in the face of this Court's decision in *Mitchell v. Forsyth*, 472 U.S. 511 (1985), where the scope of appellate review of such claims was explained:

> An appellate court reviewing the denial of the defendant's claim of immunity need not consider the correctness of the plaintiff's version of the facts, nor even determine whether the plaintiff's allegations actually state a claim. All it need determine is a question of law: whether the established legal norms allegedly violated by the defendant were clearly established at the time of the challenged actions.

472 U.S. at 528.

In the instant case, the existence of a qualified immunity defense depends on whether the law was clear that the defendant could not fire his political enemy (the plaintiff's close connection with the defendant's political adversary, a fact which is not disputed, makes her more than simply a member of an opposing political party) from the position of chief secretary.

While the circuit court seemed to base its decision on the proper analysis, the court never cited any authority to

support its conclusion. More importantly, the circuit court placed no burden on the plaintiff to present such case law to support her claim. The court clearly did not agree that the existence of *Elrod* and *Branti* was sufficient to establish the contours of the plaintiff's constitutional right regarding her continued employment. Yet the court did not require the production of any other authority in support of the plaintiff's claim, even though the state of the law at the time of the plaintiff's termination was at the heart of the qualified immunity issue.

The defendant respectfully submits that the circuit court's decision misapprehends the analysis required under *Anderson v. Creighton*, *supra*, and is erroneous as a matter of law.

II. THE LOWER COURT'S OPINION CONFLICTS WITH AUTHORITY FROM THE NINTH CIRCUIT.

In *Todd v. United States*, No. 85-4106 (9th Cir. 6/10/88), the plaintiff alleged that the imposition of a "frivolous return" penalty under 26 *U.S.C.* § 6702 was a violation of her first amendment right to protest the tax laws on the face of her tax return. The district court found that the first amendment right to free speech was clearly established, citing two Supreme Court decisions which arose in different factual contexts. The Ninth Circuit, after criticizing the lower court's analysis as "cursory," noted that none of the cases cited by the court or the plaintiff spoke to the particular question of whether the first amendment protects the conduct engaged in by the plaintiff. The court concluded:

> Todd [the plaintiff] is unable to identify Supreme Court or circuit court

> authority which is factually relevant. *See Anderson*, 107 S. Ct. at 3039-40. *Accordingly, we must conclude that Todd did not have a clearly established First Amendment right* to express her dissatisfaction with the tax laws on her tax return.

Slip op. at 6840 (footnote omitted) (emphasis added).

Similarly, the court could find no support for a conclusion that the IRS agents who wrongfully imposed the frivolous return penalty were on notice that their conduct could abridge the taxpayer's first amendment rights. As with the existence of the constitutional right in the first instance, the court considered the existence of factually relevant authority to be necessary to a showing that the wrongful imposition of the penalty was unlawful. Slip Op. at 6841.

The Seventh Circuit's decision in *Wrigley v. Greanias* is in direct conflict with the approach taken by the Ninth Circuit in *Todd*, which the defendant submits provides the proper framework for the analysis of questions of qualified immunity. If left uncorrected, the decision of the Seventh Circuit will allow future similar litigation to get bogged down in equally protracted proceedings (this litigation has been ongoing for over seven years) before the litigants even get to trial. This Court recognized in *Harlow* the high cost to public officials generated by insubstantial lawsuits. It agreed with the defendants in that case that public policy mandates " an application of the qualified immunity standard that would permit the defeat of insubstantial claims without resort to trial." 457 U.S. at 813. The Seventh Circuit, by focusing on the facts and *not* the law in *Wrigley v. Greanias*, has taken a path this Court closed as long ago as *Harlow*.

It is submitted that this Court's decision in *Anderson* requires a litigant seeking to overcome a qualified immunity defense to cite the "clearly established law" on which he relies to establish his claim. At times, a recent pronouncement of this Court will suffice to put public officials on notice that their particular conduct is forbidden. At other times, however, more authority will be needed.

For example, in the present dispute the Supreme Court cases which had been decided prior to the termination of Irene Wrigley, *Elrod* and *Branti*, clearly prohibited the termination of a public employee *solely* on the basis of his political affiliation, unless that employee was a policymaker or held a "confidential" position. Yet Basil Greanias did not fire Irene Wrigley solely because she was a Republican. Rather, he fired her because she was the mother of his political adversary and held a position of trust in his office. The Seventh Circuit recognized that the teachings of *Elrod* and *Branti* provided only the most general guidance to Basil Greanias as to the lawfulness of his particular decision, but the court failed to cite any other law of which Greanias should have been aware, which would have told him that his conduct was wrongful. This approach conflicts with both the most recent pronouncements of this Court, and the *Todd* decision of the Ninth Circuit, and should be corrected by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should grant a writ of certiorari to the Court of Appeals for the Seventh Circuit to consider the questions presented in this petition.

July 12, 1988

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS
For The Seventh Circuit

Chicago, Illinois 60604

(Argued October 1, 1985)

March 3, 1986.

Hon. *RICHARD D. CUDAHY, Circuit Judge*
Hon. *FRANK H. EASTERBROOK, Circuit Judge*
Hon. *WILBUR F. PELL, JR., Senior Circuit Judge**

E. IRENE WRIGLEY,
Plaintiff-Appellant,
vs.
BASIL G. GREANIAS, Individually and
as State's Attorney for Macon County, Illinois,
Defendant-Appellee

Appeal from the United States District Court for the
Central District of Illinois, Springfield Division.

No. 82 C 3109
Harold A. Baker, *Judge*

O R D E R

Plaintiff-appellant E. Irene Wrigley brought an action seeking compensatory and punitive damages under 42

*Judge Pell had been a member of the original panel sitting on this case. For reasons not connected with the decision of the case he did not participate in any judicial work subsequent to December 30, 1985.

U.S.C. 1983 alleging that her employment was terminated in violation of her First and Fourteenth Amendment rights by Basil G. Greanias, the Macon County State's Attorney. The district court granted summary judgment in favor of Greanias, concluding that Wrigley was the personal secretary of the State's Attorney who could be terminated without violating the Constitution. See *Elrod v. Burns*, 427 U.S. 347 (1976); *Branti v. Finkel*, 445 U.S. 507 (1980). We reverse.

I.

In January of 1978, Wrigley became the chief secretary in the Macon County State's Attorney's office. She had been employed by Macon County in several other offices since 1970. The incumbent State's Attorney did not run for reelection in 1980. Instead, Greanias ran as the Democratic candidate against the Republican candidate, Robert I. Wrigley, Irene's son. Greanias defeated Robert in the November election. Shortly thereafter, on November 12, 1980, Greanias informed Irene that she was being discharged effective December 1, 1980. In a letter, Greanias advised Wrigley that he considered her position as "one involved in the policies of the office which required close rapport" with the State's Attorney. Thus he intended to appoint a new office manager who would more closely reflect his approach to the conduct of the office. Greanias did not disparage Wrigley's work performance in any manner. Indeed, he stated in the letter that "[i]t has been my observation and it is generally known that you are a capable, hardworking and well-trained legal secretary."

On cross-motions for summary judgment supported by numerous affidavits and deposition testimony, the district court concluded that the termination was unquestionably politically motivated and that Wrigley's position was one that "facilitates the policy making [of the State's Attorney's

office] and administrates its creation." Thus, the termination was not violative of constitutionally protected conduct. The only issue on appeal is whether the district court properly determined that Wrigley, the mother of her employer's political opponent and affiliated with the opposing political party, was a confidential employee such that she is excluded from the First Amendment's protection. [1]

Summary judgment is proper and will be upheld on appeal only when the pleadings and supporting papers in the record demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The movant for summary judgment bears the burden of establishing the absence of a genuine issue of material fact and the entitlement to judgment as a matter of law. *E.g.*,

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1. A liberty interest protected by the due process clause of the Fourteenth Amendment has been recognized where a state or local government forces a person to live apart from his family. *See, e.g., Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982); *Shondel v. McDermott*, 755 F.2d 859, 865-66 (7th Cir. 1985); *Hameetman v. City of Chicago*, 776 F.2d 636, 642 (7th Cir.1985). While it is unclear whether Wrigley based her family association claim on the due process clause, the district court did not address this issue in granting summary judgment in favor of Greanias. We doubt whether she could prevail on this theory, however as there is no suggestion that Wrigley lives with her son Robert or that her specific associations with him were responsible for her termination. *See Shondel*, 775 F.2d at 866.

Additionally, there is no indication Wrigley is attempting to assert her son's rights derivatively rather than her own rights under the Constitution. *Cf. Shondel.*

Yorger v. Pittsburgh Corning Corp., 733 F.2d 1215, 1218 (7th Cir. 1984). All doubts are to be resolved against the movant, the non-moving party's reasonable allegations to be accepted as true for purposes of summary judgment. *E.g., United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962); *Munson v. Friske*, 754 F.2d 683, 690 (7th Cir. 1985); *International Administrators, Inc. v. Life Ins. Co. of N. Am.*, 753 F.2d 1373, 1378 (7th Cir. 1985); *Hermes v. Hein*, 742 F.2d 350, 353 (7th Cir. 1984).

The constitutionally protected conduct alleged in this case involves the First and Fourteenth Amendment freedoms of belief and association.[2] Although a public employee may not have an entitlement to public employment, such employment is a government benefit that cannot be conditioned in a way that penalizes the exercise of the rights to free belief and association. *Branti v. Finkel*, 445 U.S. 507, 514-17 (1980); *Elrod v. Burns*, 427 U.S. 347, 358-60 (1976) (plurality). An exception to this principle is recognized for policy-making and confidential employees if "the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." *Branti*, 445 U.S. at 518; *see also Livas v. Petka*, 711 F.2d 798, 800-01 (7th Cir. 1983). There was no allegation Wrigley was a policymaker; rather, Greanias argued that she occupied the position of personal, confidential secretary who could be terminated without violating the Constitution. *Soderbeck v. Burnett County*, 752 F.2d 285, 288 (7th Cir.), *cert. denied*, 105 S. Ct. 2360 (1985); *Stegmaier v. Trammell*, 597 F.2d 1027, 1038 (5th Cir. 1979) (dictum). The applicability of the exception is generally a factual question, *Soderbeck*, 752 F.2d at 288-

2. The right to free speech, which is analyzed under the *Pickering-Connick* line of cases, is not implicated in this action. *Connick v. Myers*, 461 U.S. 138 (1983); *Pickering v. Board of Education*, 391 U.S. 563 (1968).

89; *Nekolny v. Painter*, 653 F.2d 1164, 1169-70 (7th Cir. 1981), *cert. denied*, 455 U.S. 1021 (1982); *Stegmaier*, 597 F.2d at 1034 n.8; and Greanias carries the burden on this issue because the exception constitutes a legitimate government interest that overrides the infringement of fundamental First and Fourteenth Amendment rights. *Grossart v. Dinaso*, 758 F.2d 1221, 1226 (7th Cir. 1985); *see also Branti*, 445 U.S. at 518; *Nekolny*, 653 F.2d at 1169 (quoting *Elrod*, 417 U.S. at 367-68 (plurality)). Since the political motive for the termination is undisputed on appeal,[3] the summary judgment in favor of Greanias should be affirmed if there is no genuine issue of material fact that Mrs. Wrigley was a confidential employee and thus not engaged in constitutionally protected conduct. *Cf. Grossart*, 758 F.2d at 1227 (nonpolicymaker status conceded; motive for termination disputed).

Regarding the confidential employee determination which necessarily must focus on the nature of the employee's responsibilities, defendant Greanias related in his affidavit that he retained his predecessor's staff of seven assistant state's attorneys, one paralegal, one investigator, five staff secretaries and two others, with the exception of the termination of Wrigley and the resignation of one staff secretary. The staff secretaries' salaries were approximately 55% of the salary received by Wrigley.

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3. While Greanias does not dispute the district court's conclusion that the termination was politically motivated, he also asserts Wrigley's family relationship with his opponent as a basis for the termination. Clearly, the politically motivated termination of a political opponent's close relative who does not come within the policymaker/confidential-employee exception cannot be justified simply on the basis of family relationship with the political opponent. *See Soderbeck*, 752 F.2d at 287-88 (wife of political adversary).

When he was previously the State's Attorney from 1960 to 1976, Greanias retained the chief secretary, Mrs. Foster, of his Republican predecessor. Greanias characterized Mrs. Foster as his personal secretary with the following duties: "she handled all my correspondence; she kept my calendar and appointment book; she screened my phone calls and office visitors; she served as my liaison with county officers, the County Board, the Macon County Sheriff's office and the Decatur Police Department." She also administered the non-attorney portion of the State's Attorney's office and met with Greanias on nearly a daily basis about office administration and problems. Mrs. Foster also trained and supervised all the secretaries and supervised the non-attorney staff in their dealings with the public. Equipping the staff to provide intelligent, courteous and helpful responses to inquiries from the public was deemed vital by Greanias to the administration and public image of the office.

Mrs. Wrigley assumed the chief secretary's position after Mrs. Foster's retirement in 1978. After his 1980 election, Greanias "wanted [his] chief secretary to have substantially the same duties and responsibilities as Mrs. Foster had in [his] prior sixteen years in office. [He] did not want Irene Wrigley in that position, and honestly did not feel she would want the position under the circumstances." Greanias concluded his affidavit by stating "that the successful administration of [his] office would depend to a marked degree on the skill and loyalty with which [the] duties [of his chief secretary] were carried out. [Additionally, he] would be working very closely and relying very heavily on a day-to-day basis upon [his] chief secretary and [he] needed a person in that job in whom [he] could confide and upon whose loyalty [he] could depend."

The job descriptions given by Wrigley's predecessor and successor do not contradict, nor do they wholly support, Greanias' description of the position. For example,

neither mentioned contact with the public and its importance to the State's Attorney's office.

Wrigley's characterization of the chief secretary's position, supported by various affidavits and depositions of former State's Attorney personnel, differs from Greanias'. While Wrigley concedes that the position was supervisory in nature, most of her time was spent preparing juvenile, nonsupport, and mental incompetency petitions for an Assistant State's Attorney. She also took dictation from all the attorneys in the office including Greanias' predecessor. Two affidavits from persons employed between 1979 and 1983 were submitted regarding the nature of the chief secretary's job. A staff secretary, Bramhall, stated that she typed Greanias' personal correspondence, office dictation, and documents for submission to the County Board. She also stated that the incoming telephone calls were answered by the receptionist and transferred directly to the attorney, not the attorney's secretary. An Assistant State's Attorney who had occasion to observe both Wrigley and her successor stated that the staff secretaries prepared Greanias' personal correspondence, pleadings, and dictation while Wrigley's successor did not handle personal secretarial work for Greanias except for some assistance on minor budgetary matters and the completion of daily police report logs.

In view of the conflicting evidence submitted by the parties and the inferences which may be drawn therefrom, the defendant has not demonstrated the absence of material issues of fact relevant to the plaintiff's constitutional claim. For example, while the chief secretary's job may have been supervisory in some respects, a reasonable inference could be drawn that the tasks of the chief and staff secretaries were not sharply differentiated. *E.g.*, *Soderbeck*, 752 F.2d at 288. Particularly disturbing is the district court's acceptance of Greanias' description of the

job, made in an effort to defend this lawsuit. In granting the defendant's motion, the district court relied heavily on its determination regarding who is in a better position to define the job of chief secretary than the person who essentially creates that job, the state's attorney. It is the state's attorney who needs the work done and it is he who must organize his office so that his policies are carried out efficiently, and if he sees a need for confidentiality or a need for political and personal affiliation in his chief secretary, who can contradict him. Certainly, it is not the position of the secretary to define her job vis-a-vis the state's attorney, her boss. The fact that the plaintiff has attempted to do so is evidence of her incompatibility with the system in Macon County as it now stands.

Memorandum order, p. 5 (Dec. 5, 1984).

In drawing this conclusion, however, the district court evaluated the factual evidence and chose to credit defendant's rather than plaintiff's version of the chief secretary's job description.[4] Such judicial weighing of the

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4. The existence of a small county and staff similarly does not weigh in Greanias' favor. The cases cited in support of this proposition were later vacated or questioned. *McBee v. Jim Hogg County*, 703 F.2d 834 (5th Cir. 1983), *vacated*, 730 F.2d 1009 (5th Cir.1984) (en banc); *Ramey v. Harber*, 589 F.2d 753 (4th Cir. 1978) (dictum), *cert. denied*, 442 U.S. 910 (1979), *questioned*, *Jones v. Dodson*, 727 F.2d 1329, 1338 n.14 (4th Cir. 1984). Indeed, as the Fourth Circuit recognized, while a small-size distinction may have had some vitality under *Elrod*, it probably has been completely undercut by *Branti*'s refinement of the *Elrod* principle. The *Branti* emphasis is not upon size or intimacy of working associations but upon the extent to which the discharged employee engages in policymaking related to "partisan political interests" and has access to confidential in-

evidence is impermissible on a motion for summary judgment.

Although the question is a close one, and we recognize that Wrigley's claims may prove to be without merit, the district court erred in its blanket acceptance of the defendant's job description and its finding that Mrs. Wrigley was a confidential employee as a matter of law. Accordingly, the decision of the district court is REVERSED.

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formation "bearing whatsoever on partisan political concerns." *Branti*, 445 U.S. at 519. *Branti* rejected any general notion that mutual trust and confidence could only exist between members of the same political party in an agency of the small size there involved. *Id.* at 520 n.14. This Court even concluded that the small county and staff involved in *Soderbeck* favored the jury's finding that the wife of the former sheriff was not a policymaking or confidential employee. 752 F.2d at 288-89.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

E. IRENE WRIGLEY,
Plaintiff,
vs.
BASIL G. GREANIAS,
Defendant.

No. 86-2101

ORDER

The plaintiff, E. Irene Wrigley, brings this action pursuant to 42 *U.S.C.* § 1983, alleging that Basil G. Greanias, the Macon County State's Attorney, violated her First and Fourteenth Amendment rights. Specifically, Wrigley alleges that she was discharged from her position as chief secretary in the Macon County State's Attorney's Office because of her political affiliation and her affiliation with her son, Robert Wrigley, the unsuccessful 1980 Republican candidate for State's Attorney. This matter is now before the court on the defendant's motion for summary judgment.[1]

The defendant bases his motion on the defense of qualified immunity, arguing that his action in discharging

1. This is the defendant's third motion for summary judgment. The court previously granted summary judgment in favor of Greanias, finding that Wrigley was a confidential employee who could be terminated without violating the constitution. The Seventh Circuit reversed, concluding that there was a genuine issue of material fact as to Mrs. Wrigley's status as a confidential employee.

the plaintiff did not violate clearly established law. A similar motion has already been raised and ruled on by the court. *See* Docket #17, March 2, 1984, Defendant's Motion for Summary Judgment, and Docket Order March 12, 1984, denying defendant's motion for summary judgment based on qualified immunity. However, the court (Ackerman, C.J.) did not give a reasoned opinion for that decision. While there are very few occasions when an explanation of the reasons for a decision is constitutionality mandated, *Harris v. Rivera*, 454 U.S. 339, 344 (1981) (per curiam), "[r]eview of any trial court decision is, of course, facilitated by findings and by an explanation of the reasons supporting the decision." *Arizona v. Washington*, 434 U.S. 497, 517 (1978). An explanation for a decision facilitates not only appellate review, but also lends a better understanding of the law to the parties and attorneys involved.

FACTS

The plaintiff had been employed by the Macon County since 1970. In January, 1978, the plaintiff became the chief secretary in the Macon County State's Attorney's Office. In 1980, the incumbent State's Attorney did not run for reelection. Instead, the defendant ran as the Democratic candidate against the Republican candidate, Robert Wrigley, the plaintiff's son. The defendant defeated Robert Wrigley in the November, 1980 election. Shortly thereafter, on November 12, 1980, the defendant informed the plaintiff that she was being discharged effective December 1, 1980.

DISCUSSION

Summary judgment generally turns on the questions of whether there is a material fact in dispute and, if not, whether the moving party is entitled to judgment as a matter of law. *See Fed. R. Civ. P.* 56(c). However, when the

defense of qualified immunity is raised, the court must make a threshold determination, as a matter of law, as to the validity of that defense. *See Harlow v. Fitzgerald*, 457 U.S. 800 (1982). In a suit for damages, if the defendant is entitled to the defense of qualified immunity, summary judgment will be granted in his favor.

The standard for determining when a public official is entitled to qualified immunity was set forth by the Supreme Court in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

> [G]overnment officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

Id. at 818. The test is measured by a reference to the law at the time the alleged unlawful action occurred. *Id.*

Under the *Harlow* analysis, Greanias would be entitled to qualified immunity only if his conduct in discharging the plaintiff did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. The issues to be resolved are: (1) whether the law, with respect to politically motivated terminations, was clearly established in November, 1980; and (2) whether the law with respect to terminations motivated by familial associations was clearly established in November, 1980.

POLITICALLY MOTIVATED FIRINGS

The court finds that the surrounding politically motivated firings was settled and clearly established at the

time of the plaintiff's discharge. Prior to November, 1980, in *Elrod v. Burns*, 427 U.S. 347 (1976), and *Branti v. Finkel*, 445 U.S. 507 (1980), the Supreme Court held that the First and Fourteenth Amendments protect public employees from being discharged solely because of their political beliefs and affiliations. An exception is recognized, however, for policymaking and confidential employees if "a hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." *Branti*, 445 U.S. at 518.

The defendant argues that under *Egger v. Phillips*, 710 F.2d 292 (7th Cir. 1983), he is entitled to the defense of qualified immunity and thus judgment in his favor on this motion. In *Egger*, an FBI supervisor transferred an agent from the Indianapolis office to the Chicago office because of the agent's loss of effectiveness in the Indianapolis office. Prior to the recommended transfer, Egger had made allegations of wrongful conduct on the part of other personnel in the Indianapolis office. Egger refused the transfer and was discharged. The Seventh Circuit held that the supervisor was entitled to the defense of qualified immunity because the general state of the law at the time of Egger's transfer was not clearly established, that a reasonable person in the position of the supervisor could not have known at the time he made his recommendation for a transfer that it was constitutionally impermissible. *Id.* at 315. *Egger* dealt with the right to free speech, an issue not implicated here.

Under *Elrod* and *Branti* the law surrounding politically motivated terminations was clearly established in November, 1980. *See Nekolny v. Painter*, 653 F.2d 1164, 1171 (7th Cir. 1981) (where it was held that the law with respect to politically motivated terminations was clearly settled in 1977, citing to *Elrod* and *Mount Healthy City School Board of Ed. v. Doyle*, 429 U.S. 274 (1977)). The defendant

should have known the law governing his conduct. *See Harlow*, 457 U.S. at 818-819.

Whether the plaintiff was a confidential employee whose party affiliation was an appropriate requirement for the effective performance of her job and who could thus be terminated without violating the constitution remains to be seen. That question is a factual one, *Nekolny*, 653 F.2d at 1169; *Soderbeck v. Burnett County*, 752 F.2d 285, 288 (7th Cir.), *cert. denied* 105 S. Ct. 2360 (1985), rendering the defendant's motion for summary judgment inappropriate on the issue of politically motivated firings.

FAMILIAL ASSOCIATION

While the plaintiff asserts a constitutional right to familial association, she does not articulate with any specificity the exact nature of those rights and makes no argument to the court in response to the defendant's motion for summary judgment on this issue. The court infers, however, that the plaintiff is attempting to assert a right to familial association under the First and Fourteenth Amendments.

The defendant argues that the plaintiff does not present a valid constitutional claim. Specifically, the defendant argues that there is no constitutional right to familial association which, if true, entitles him to the defense of qualified immunity.

The constitution does protect, in some instances, the right to familial association. For instance, a state or city that forces a person to live apart from her family deprives her of a form of liberty protected by the Due Process Clause of the Fourteenth Amendment. *See Santosky v. Kramer*, 455 U.S. 745, 753-754 (1982); *Hameetman v. City of Chicago*, 766 F.2d 636, 642 (7th Cir. 1985). Also, it has

been held that the First Amendment freedom of association applies not only to situations where an advancing of common beliefs occurs, but also to purely social and personal associations. *See Wilson v. Taylor*, 733 F.2d 1539, 1542-1544 (11th Cir. 1984) (the firing of a police officer for dating the daughter of a convicted felon and organized crime leader violated the police officer's First Amendment rights).

While it is clear that the constitution does protect familial association, there is some authority that such a right may not be infringed in circumstances similar to these. *See Shondel v. McDermott*, 775 F.2d 859 (7th Cir. 1985) (on a motion for a preliminary injunction, the court indicated that the discharge of a public employee, fired by the newly elected mayor because her stepfather was a political opponent of his, did not infringe her right to associate with the members of her family).

Whatever the state of the law is today, the court notes that the majority of cases dealing with the right to familial association have been post-1980. As such, it cannot be said that the law surrounding rights to familial association was settled and clearly established in November, 1980. Under the *Harlow* analysis, Greanias is entitled to qualified immunity in that his conduct in discharging the plaintiff, if inspired solely by the fact that the plaintiff was the mother of his political opponent, did not violate a clearly established constitutional right of which a reasonable person would have known. Therefore, the defendant's motion for summary judgment is granted with respect to the plaintiff's allegation that her discharge violated her rights to familial association.

IT IS THEREFORE ORDERED that the defendant's motion for summary judgment (Docket # 55) is granted in part and denied in part.

ENTER this 20th day of March, 1987.

HAROLD A. BAKER
Chief U.S. District Judge

In the
United States Court of Appeals
For the Seventh Circuit

No. 87-1623

E. IRENE WRIGLEY,

Plaintiff-Appellee

v.

BASIL G. GREANIAS, Individually and as State's Attorney in and for Macon County, Illinois,

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of Illinois, Danville Division.
No. 86-2101—**Harold A. Baker**, *Judge*.

ARGUED NOVEMBER 5, 1987—DECIDED MARCH 22, 1988

Before CUMMINGS, RIPPLE, and MANION, *Circuit Judges*.

RIPPLE, *Circuit Judge*. The defendant-appellant, Basil Greanias, appeals from an order of the district court denying him qualified immunity. For the following reasons, we affirm that order.

I
BACKGROUND

A. *Facts*

In the November 1980 election for State's Attorney of Macon County, Illinois, Basil G. Greanias, the Democratic candidate, defeated Robert Wrigley, the Republican candidate. Prior to the 1980 election, E. Irene Wrigley, the mother of Robert Wrigley, was chief secretary for the then incumbent State's Attorney, Patrick Walsh, a Republican who had not run for reelection. Mrs. Wrigley had been employed by Macon County since 1970 in numerous positions. She became chief secretary in 1978. Shortly after the 1980 election, Mr. Greanias terminated Mrs. Wrigley's employment. In a letter, Mr. Greanias advised Mrs. Wrigley that he considered her position to be "one involved in the policies of the office, and one which requires a close rapport" with the State's Attorney. R.27 (letter attached to affidavit of Irene Wrigley). Mr. Greanias did not disparage Mrs. Wrigley's work performance in any manner. Indeed, he stated in the letter that "[i]t has been my observation and it is generally known that you are [a] capable, hardworking and well-trained legal secretary." *Id.* Upon being fired, Mrs. Wrigley filed the present lawsuit under 42 U.S.C. § 1983. She sought damages on the ground that her discharge was constitutionally improper because it was based solely on her political affiliation with the Republican party.[1]

B. *Procedural History*

This is the third motion for summary judgment filed by the defendant, Mr. Greanias, in this lawsuit. Mr. Greanias first filed a motion for summary judgment in which he

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[1] Mrs. Wrigley also asserted that her constitutional right to familial association had been violated. This claim was apparently premised on the due process clause of the fourteenth amendment. *See infra* note 3.

asserted that he was entitled to qualified immunity under *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), which the district court did not act on until the day of trial. R.17. On the morning of trial, the parties met with the district judge in his chambers. At this time, the judge cancelled the trial on his own motion because he believed that the question of whether the plaintiff's position was a protected one under the Constitution was one of law for the court rather than the jury to decide. Accordingly, the district judge ordered the defendant to file a motion for summary judgment on the question of whether the plaintiff's position was constitutionally protected. At the same time, the district judge denied without opinion the defendant's previously filed motion for summary judgment based on the qualified immunity defense. *See Wrigley v. Greanias*, No. 86-2101, docket order (C.D. Ill. Mar. 12, 1984).

The parties then filed cross-motions for summary judgment on the question of whether the plaintiff's position was constitutionally protected. R.20, 25. After reviewing the various affidavits and depositions submitted by both sides, the district court concluded that the termination was unquestionably politically motivated.[2] *Wrigley v. Greanias*, No. 82-3109, order at 2 (C.D. Ill. Dec. 5, 1984); R.38 at 2. However, the court went on to find that Mrs. Wrigley's position was one that "facilitates the policy making [of the State's Attorney's office] and administrates [sic] its creation." *Id.* at 6. Therefore, the court held that the termination did not, as a matter of law, violate any of the plaintiff's constitutionally protected rights, and it granted the defendant's motion for summary judgment.

The plaintiff appealed from the district court's order granting the defendant's second motion for summary judgment. In an unpublished order, this court reversed. This court held that the district court erred in holding, as a matter of law, that Mrs. Wrigley was a confidential em-

[2] The defendant does not dispute this finding. *See* Appellant's Br. at 15-16.

ployee. *Wrigley v. Greanias*, No. 85-1206, order (7th Cir. Mar. 3, 1986) [hereinafter Order of Mar. 3, 1986]; R.47. In evaluating the factual evidence, the district court had erroneously credited Mr. Greanias' rather than Mrs. Wrigley's version of the chief secretary's job description. Such judicial weighing of the evidence, the court noted, is impermissible on a motion for summary judgment. *Id.* at 6. In view of the conflicting evidence submitted by the parties and the inferences which could be drawn therefrom, the court concluded that a material issue of fact remained as to whether Mrs. Wrigley was a confidential employee who could be discharged for political reasons. *Id.*

Mr. Greanias then filed his third motion for summary judgment. In this motion, he raised the issue of qualified immunity for a second time. Because the court had not given a reasoned opinion for its earlier decision denying the defendant's first motion seeking summary judgment on grounds of qualified immunity, the district court readdressed the issue. *Wrigley v. Greanias*, No. 86-2101, order at 2 (C.D. Ill. Mar. 20, 1987) [hereinafter Order of Mar. 20, 1987]; R.61 at 2.

C. *Opinion of the District Court*

On the authority of *Elrod v. Burns*, 427 U.S. 347 (1976), and *Branti v. Finkel*, 445 U.S. 507 (1980), the district court determined that the law surrounding politically motivated firings was settled and clearly established at the time of the plaintiff's discharge. Order of Mar. 20, 1987 at 4. Consequently, the court held that the defendant was not entitled to qualified immunity under the *Harlow* doctrine. The court determined that the only uncertainty in the case involved whether the plaintiff was a confidential employee whose party affiliation was an appropriate requirement for the effective performance of her job, and who thus could be terminated under *Branti* without violating the Constitution. *Id.* at 5. It had already been decided on appeal that this uncertainty constituted a disputed question of fact which should be resolved at trial

by the jury. *Id.* Accordingly, the court denied the defendant's motion for summary judgment.[3] The defendant now appeals from this order of the district court.

II

DISCUSSION

The standard for determining when a public official is entitled to qualified immunity is set forth in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). There, the Supreme Court held that "government officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 818. After the district court ruled in this case, the Supreme Court refined the *Harlow* formula by emphasizing that the right allegedly violated may not be asserted at any level of generality. Rather,

> the right the official is alleged to have violated must have been "clearly established" in a more particularized, and hence more relevant, sense: The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held un-

[3] The district court granted the defendant's motion for summary judgment insofar as it related to the plaintiff's claim against the defendant based on her due process right to familial association. *Wrigley v. Greanias*, No. 86-2101, order at 5-7 (C.D. Ill. Mar. 20, 1987); R.61 at 5-7. The court reasoned that, regardless of whether the plaintiff's right to familial association had in fact been infringed in this case, the majority of the cases dealing with this right had been decided since 1980. As such, the court concluded, it could not be said that the law surrounding rights to familial association was clearly established in November of 1980 when Mrs. Wrigley was fired. *Id.* at 6-7. Mrs. Wrigley does not challenge this portion of the district court's order on appeal.

> lawful, but it is to say that in the light of preexisting law the unlawfulness must be apparent.

Anderson v. Creighton, 107 S. Ct. 3034, 3039 (1987) (citation omitted).

What is important, in the final analysis, is "whether the legal norms governing [the government official's] behavior were clearly established at the time of the challenged actions." *Wade v. Hegner*, 804 F.2d 67, 71 (7th Cir. 1986) (citing *Mitchell v. Forsyth*, 472 U.S. 511 (1985)). We often refer to closely analogous case law, decided before the public official acted or failed to act, to determine whether such legal norms existed at the pertinent time. *Kompare v. Stein*, 801 F.2d 883, 887 (7th Cir. 1986); *Lojuk v. Johnson*, 770 F.2d 619, 628 (7th Cir. 1985), *cert. denied*, 474 U.S. 1067 (1986). Of course, "[t]his is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful . . . ." *Anderson*, 107 S. Ct. at 3039. However, it must be "sufficiently clear that a reasonable official would understand that what he is doing violates" such a clearly established right. *Id.*

The district court was certainly correct on one level of generality when it stated that "the law surrounding politically motivated firings was settled and clearly established at the time of the plaintiff's discharge." Order of Mar. 20, 1987 at 4. *Elrod v. Burns*, 427 U.S. 347 (1976), and *Branti v. Finkel*, 445 U.S. 507 (1980), establish that the first and the fourteenth amendments protect public employees from being discharged solely because of their political beliefs and affiliations unless "party affiliation is an appropriate requirement for the effective performance of the public office involved." *Branti*, 445 U.S. at 518. However, the inquiry does not end here. Mr. Greanias would be entitled to qualified immunity if, at the time he acted, the law did not clearly establish that a state's attorney was prevented from discharging someone holding *this particular position.*

In defining the position, we must keep in mind that "[t]here is no question that a new officeholder can revamp the organization he controls and convert a ministerial position into one closer to the core of the policy-making process." *Meeks v. Grimes*, 779 F.2d 417, 419 n.1 (7th Cir. 1985). Moreover, if an employee "performs fewer or less important functions than usually attend his position, he may still be exempt from the prohibition against political terminations if his position inherently encompasses tasks that render his political affiliation an appropriate prerequisite for effective performance." *Tomczak v. City of Chicago*, 765 F.2d 633, 641 (7th Cir.), *cert. denied*, 474 U.S. 946 (1985).

However, even when assessed against these principles, we believe that the district court correctly concluded that summary judgment could not be granted here. As the district court noted, and as another panel of this court noted during the earlier appeal, the record reflects a factual dispute between the parties as to the nature of the job in question. As our brothers noted during their earlier review of the record, there is indeed a sharp disagreement between the parties as to the responsibilities of the post. Moreover, this disagreement includes issues of credibility as to whether Mr. Greanias did in fact intend to transform the position from one of a general administrative/clerical nature to one of a confidential nature. In the earlier appeal, the panel summarized this disagreement as follows:

> Regarding the confidential employee determination which necessarily must focus on the nature of the employee's responsibilities, defendant Greanias related in his affidavit that he retained his predecessor's staff of seven assistant state's attorneys, one paralegal, one investigator, five staff secretaries and two others, with the exception of the termination of Wrigley and the resignation of one staff secretary. The staff secretaries' salaries were approximately 55% of the salary received by Wrigley. When he was previously the State's Attorney from 1960 to 1976, Greanias retained the chief secretary, Mrs. Foster, of his Republican

predecessor. Greanias characterized Mrs. Foster as his personal secretary with the following duties: "she handled all my correspondence; she kept my calendar and appointment book; she screened my phone calls and office visitors; she served as my liasion [sic] with county officers, the County Board, the Macon County Sheriff's office and the Decatur Police Department." She also administered the non-attorney portion of the State's Attorney's office and met with Greanias on nearly a daily basis about office administration and problems. Mrs. Foster also trained and supervised all the secretaries and supervised the non-attorney staff in their dealings with the public. Equipping the staff to provide intelligent, courteous and helpful responses to inquiries from the public was deemed vital by Greanias to the administration and public image of the office.

Mrs. Wrigley assumed the chief secretary's position after Mrs. Foster's retirement in 1978. After his 1980 election, Greanias "wanted [his] chief secretary to have substantially the same duties and responsibilities as Mrs. Foster had in [his] prior sixteen years in office. [He] did not want Irene Wrigley in that position, and honestly did not feel she would want the position under the circumstances." Greanias concluded his affidavit by stating "that the successful administration of [his] office would depend to a marked degree on the skill and loyalty with which [the] duties [of his chief secretary] were carried out. [Additionally, he] would be working very closely and relying very heavily on a day-to-day basis upon [his] chief secretary and [he] needed a person in that job in whom [he] could confide and upon whose loyalty [he] could depend."

The job descriptions given by Wrigley's predecessor and successor do not contradict, nor do they wholly support, Greanias' description of the position. For example, neither mentioned contact with the public and its importance to the State's Attorney's office.

> Wrigley's characterization of the chief secretary's position, supported by various affidavits and depositions of former State's Attorney personnel, differs from Greanias'. While Wrigley concedes that the position was supervisory in nature, most of her time was spent preparing juvenile, nonsupport, and mental incompetency petitions for an Assistant State's Attorney. She also took dictation from all the attorneys in the office including Greanias' predecessor. Two affidavits from persons employed between 1979 and 1983 were submitted regarding the nature of the chief secretary's job. A staff secretary, Bramhall, stated that she typed Greanias' personal correspondence, office dictation, and documents for submission to the County Board. She also stated that the incoming telephone calls were answered by the receptionist and transferred directly to the attorney, not the attorney's secretary. An Assistant State's Attorney who had occasion to observe both Wrigley and her successor stated that the staff secretaries prepared Greanias' personal correspondence, pleadings, and dictation while Wrigley's successor did not handle personal secretarial work for Greanias except for some assistance on minor budgetary matters and the completion of daily police report logs.

Order of Mar. 3, 1986 at 4-5.

Moreover, Mr. Greanias' claim of qualified immunity clearly is premised on acceptance of his view of the position's responsibilities. He does not contend that, even if Mrs. Wrigley's view of the facts is correct, the state of the law was such that he had reasonable grounds to believe that he could discharge her for political reasons. As the Supreme Court noted in *Mitchell v. Forsyth*, 472 U.S. 511 (1985):

> An appellate court reviewing the denial of the defendant's claim of immunity need not consider the correctness of the plaintiff's version of the facts, nor even determine whether the plaintiff's allegations ac-

> tually state a claim. All it need determine is a question of law: whether the legal norms allegedly violated by the defendant were clearly established at the time of the challenged actions . . . .

Id. at 528. The Court continued in the accompanying footnote:

> We emphasize at this point that the appealable issue is a purely legal one: whether the facts alleged . . . support a claim of violation of clearly established law.

Id. at 528 n.9.

Finally, we stress that our holding today intimates no view with respect to the merits of this litigation. We simply affirm the holding of the district court that, on this record, summary judgment cannot be granted.

AFFIRMED

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit